

REMARKS

This response is submitted in response to the Office Action mailed on February 9, 2004. The purpose of this response is to avoid what Applicants believe would be an unnecessary appeal. In this regard, Claims 1-17 stand rejected under 35 U.S.C. § 103 for the reasons previously set forth in a first Office Action. Applicants do not believe the rejection is proper for the reasons previously articulated by Applicants. Moreover, Applicants believe that the latest Office Action demonstrates that the claims have been improperly interpreted and therefore Applicants request reconsideration based on a proper claim interpretation.

In this regard, the Patent Office states:

All of Applicants remarks filed on 10/7/03 have been fully and carefully considered but are not found to be convincing. As a point of information, on page 3 of the amendment, it is urged that both the outer and inner layers extend from the lower end to the upper end of the canned pet food. The claimed [sic] only recite the lower end to the upper end. The claims do not specify whether the recited ends are the ends of the food product or ends of the can. The claims do not even recite whether these ends are relative or exact; that is, whether the two faces extend exactly in the same direction. The claims use the term tubular but this term is somewhat relative as well.

See page 2 of the Office Action dated February 9, 2004.

Applicants respectfully submit that this statement in and of itself demonstrates the rejections are not proper. Independent Claims 1, 2, and 6 claim “a canned pet food product.” The preamble of each claim states “a canned pet food product having an upper end and a lower end.” The claims then recite, as the Office Action admits, limitations relating to the upper end and the lower end.

Clearly, the claims do specify whether the recited upper and lower ends are of the food product or the can. Antecedent basis is provided for a food product having an upper and lower end. Further, the word “the” is utilized in the text of the claim advising anyone skilled in the art as well as one reviewing a claim that the “the” upper end and “the” lower end refer to ends that have already been defined, i.e., in the preamble.

Moreover, the claims state that, for example, the inner phase extends from the lower end to the upper end. Clearly, this is specifying that the ends extend in the same direction.

Therefore, the upper and lower ends are clearly defined. It is, Applicants respectfully submit, only through a tortured reading of the claims that the interpretation the Office Action has given to the claims, could even be arguably made. Moreover, the structural relationship of the pet food set forth in the claims is neither suggested nor disclosed by the art. In this regard, the cited art clearly lacks the claimed structure. Still further, even if the Patent Office had properly construed the claims, it is only when 13 references are used that an obviousness rejection can even be crafted. This in and of itself demonstrates the obviousness rejection is not proper.

Applicants respectfully submit that, when properly interpreted, clearly the claims are allowable over the cited art. Applicants respectfully request that the Patent Office pass the above-identified patent application to allowance or issue a new Office Action that properly considers the claims at issue.

Accordingly, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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